

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID L. FULBRIGHT,

Petitioner,

No. CIV S 04-2490 DFL PAN P

vs.

D. L. RUNNELS, et al.,

Respondents.

ORDER

Petitioner is a state prisoner without counsel. On March 17, 2006, the court dismissed this action and judgment was entered. On April 20, 2006, petitioner filed a request for an extension of time to file a notice of appeal and an application for a certificate of probable cause. Plaintiff signed this document and its proof of service by mail on April 16, 2006.¹

A timely notice of appeal is a jurisdictional prerequisite to appealing a judgment of the district court. Fed. R. App. P. 4(a); Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978). Ordinarily, a party in a civil case must file the notice within thirty days after judgment is entered. Fed. R. App. P. 4(a). The district court may extend time to appeal if a party so moves within thirty days of the time the notice must be filed and the party shows either excusable neglect or good cause. Fed. R. App. P. 4(a)(5).

¹ The date petitioner signed the proof of service by mail controls as he gets the benefit of the mailbox rule. See Smith v. Duncan, 297 F.3d 809, 814 (9th Cir. 2002).

1 A court may find excusable neglect upon a showing a party failed timely to file
2 because of careless omission to act. See Pincay v. Andrews, 351 F.3d 947, 950 (9th Cir. 2003).
3 A party who seeks an extension within thirty days after time to appeal expired need show only
4 show good cause. See State of Oregon v. Champion International Corp., 680 F.2d 1300, 1301
5 (per curiam) (noting the good cause language was added to the rule because the excusable neglect
6 standard does not fit the situation in which an appellant seeks an extension before the expiration
7 of the initial appeal period); see also Fed. R. App. P. 4(a)(5) advisory committee note.

8 Petitioner had until April 16, 2006, to file a notice of appeal or to move for an
9 extension of time to file a notice of appeal.

10 Petitioner's April 16, 2006, request for an extension of time is timely.

11 Petitioner asserts he cannot timely appeal because officials periodically cancel
12 programming, which has limited petitioner's access to the law library.

13 Petitioner has shown good cause.

14 Petitioner's April 20, 2006, request will be granted.

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. Petitioner's April 20, 2006, request for an extension of time to file a notice of
17 appeal and an application for a certificate of appealability is granted;

18 2. Petitioner has thirty days from the date of this order to file and serve a notice of
19 appeal and an application for a certificate of appealability.

20 DATED: May 2, 2006.

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23 UNITED STATES MAGISTRATE JUDGE
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